



CITY COUNCIL

AGENDA REQUEST

AGENDA OF: OCTOBER 16, 2007

**AGENDA
REQUEST NO:** III E

INITIATED BY: JOE MORRIS, CITY ATTORNEY

**RESPONSIBLE
DEPARTMENT:** CITY ATTORNEY'S OFFICE

PRESENTED BY: JOE MORRIS, CITY ATTORNEY

**DEPARTMENT
HEAD:** JOE MORRIS, 
CITY ATTORNEY

**ADDITIONAL
DEPARTMENT.
HEAD (S):** N/A

**SUBJECT /
PROCEEDING:** ANDREWS & KURTH PERFORMING ARTS CENTER CONTRACT

EXHIBITS: ANDREWS & KURTH CONTRACT

CLEARANCES

APPROVAL

LEGAL: JOE MORRIS, CITY ATTORNEY 

**EXECUTIVE
DIRECTOR:** N/A

PURCHASING: N/A

**ASST. CITY
MANAGER:** N/A

BUDGET: JENNIFER BROWN 
ASSISTANT FISCAL SERVICES DIRECTOR

CITY MANAGER: ALLEN BOGARD 

BUDGET

EXPENDITURE REQUIRED: \$ 75,000.00

AMOUNT BUDGETED/REALLOCATION: \$ 75,000.00

ADDITIONAL APPROPRIATION: \$ N/A

RECOMMENDED ACTION

Approval of Andrews & Kurth, L.L.P. legal services contract.

EXECUTIVE SUMMARY

On June 20, 2007 the Sugar Land 4B corporation unanimously approved Resolution No. 07-06-01 in the amount of \$196,600.00 to provide project funding to determine the feasibility of constructing a performing arts center within the City. In the amount approved, there was a specific line item to cover outside legal services in the amount of \$75,000.00. Subsequently, on July 17, 2007, the City Council approved the project funding amount of \$196,600.00 to cover these services including the \$75,000.00 amount for outside legal services.

The agenda item before you today is to approve a contract with Andrews & Kurth, L.L.P. for legal services to assist the City in determining the feasibility, financing, lease, construction or other matters relating to a proposed performing arts center located within the City. The funds provided for these services are appropriated within the 4B Corporation's fiscal year 2006/07 Economic Development Program budget, and will be carried over to fiscal year 2007/08 for completion of the project.

EXHIBITS

Andrews & Kurth, L.L.P. contract

**CITY OF SUGAR LAND STANDARD FORM
OF CONTRACT FOR LEGAL SERVICES**

Long Form - Revised 10/16/06

This Contract (Contract) is made between the City of Sugar Land, Texas, and Outside Counsel. The parties agree as follows:

I. Standard Provisions

A. Definitions. In this Contract

Engagement means the legal services to be provided by Outside Counsel as described in Part II of this Contract.

City means the City of Sugar Land, Texas, a municipal corporation located in Fort Bend County, Texas.

City Representative means the City employee or employees designated in this Contract to work with Outside Counsel on the Engagement as specified in Part II of this Contract.

Outside Counsel means the attorney or legal firm designated in this Contract to fulfill the Engagement as specified in Part II of this Contract.

Lead Counsel means the attorney for Outside Counsel as specified in Part II of this Contract that is responsible for directing and completing the Engagement.

B. Parties' Representatives and Third Party Contracts.

(1) This Contract designates a Lead Counsel. Lead Counsel will be responsible to the City for directing and completing the Engagement. Outside Counsel may not assign another person as Lead Counsel for the Engagement without the prior consent of the City Representative.

(2) This Contract designates one or more City Representatives. Outside Counsel will work directly with and is subject to the direct supervision and control of the City Representative in performing the Engagement. All significant decisions that could affect the success or completion of the Engagement must be discussed with and approved by the City Representative. Outside Counsel will report to the City Representative on the status, progress, time schedules, evaluation, costs, or other matters relating to the Engagement as from time-to-time requested by the City Representative, including when requested, making written reports of the same. Upon reasonable notice, Outside Counsel will be available to brief the City's city council or city management regarding the Engagement.

(3) Outside Counsel may not hire any other attorneys, consultants or experts for this Engagement without the prior approval of the City. Outside Counsel may contract with court reporters, copy and courier services, and similar contractors to perform or provide the usual or routine services needed to complete the Engagement without the prior permission of the City if the cost of the services will not exceed \$1000.

C. Termination Provisions.

(1) *City Termination for Convenience.* Under this paragraph, the City may terminate this Contract during its term at any time for the City's own convenience where Outside Counsel is not in default by giving written notice to Outside Counsel. If the City terminates this Contract under this paragraph, the City will pay the Outside Counsel for all services rendered in accordance with this Contract to the date of termination.

(2) *Termination for Default.* Either party to this Contract may terminate this Contract as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing citing the terms of the Contract that have been breached and what action the defaulting party must take to cure the default. If the party in default fails to cure the default as specified in the notice, the party giving the notice of default may terminate this Contract by written notice to the other party, specifying the date of termination. Termination of this Contract under this paragraph does not affect the right of either party to seek remedies for breach of the Contract as allowed by law, including any damages or costs suffered by either party.

(3) *Multi-Year Contracts and Funding.* If this Contract extends beyond the City's fiscal year in which it becomes effective or provides for the City to make any payment during any of the City's fiscal years following the City's fiscal year in which this Contract becomes effective and the City fails to appropriate funds to make any required Contract payment for that successive fiscal year and there are no funds from the City's sale of debt instruments to make the required payment, then this Contract automatically terminates at the beginning of the first day of the City's successive fiscal year of the Contract for which the City has not appropriated funds or otherwise provided for funds to make a required payment under the Contract.

D. Methods of Communications and Documents. As a condition of Outside Counsel's engagement and for efficiency, tracking, and to control costs, Outside Counsel *should communicate with and provide documents generated by Outside Counsel to the City Representative by email except where another form of communication requires an immediate response, for a discussion of strategy, security is a concern, or similar concerns.* Outside Counsel must also make a concerted effort to have third parties providing documents relating to Outside Counsel's Engagement provide documents by email if they are to be provided to the City. The documents to be provided to the City Representative from Outside Counsel for this Engagement are as specified in this Contract or, if not specified, as agreed between Outside Counsel and the City Representative.

E. Billing and Payment. All bills, billing, and payments for services rendered under this Contract will comply with this Contract and the provisions more particularly described in Exhibit A, attached to and incorporated into this Contract by reference.

F. Insurance. Outside Counsel shall procure and maintain insurance as specified in that document entitled Insurance for Designated Professional Service Contracts [Form PU-11F-2 (2 pages)], attached to this Contract as Exhibit C.

G. Conflicts. The City expects that Outside Counsel's representation will be free of any conflicting interests. Any actual or potential conflict (including any adverse representation by Outside Counsel's law firm) must be discussed with and disclosed in writing to the City Representative as soon as Outside Counsel recognizes the existence of or potential for such a situation.

H. News Media. Outside Counsel will not respond to inquiries from the news media about a matter assigned to it unless it is discussed first with and approved by the City Representative.

I. Assignment. Outside Counsel shall not assign this Contract without the prior written consent of the City.

J. Law Governing and Venue. The law of the State of Texas governs this Contract and a lawsuit may not be prosecuted on this Contract except in a court of competent jurisdiction located in Fort Bend County, Texas.

K. Entire Contract. This Contract represents the entire Contract between the City and Outside Counsel and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

II. Special Provisions for Engagement.

The following information and special provisions apply to this Contract:

1. Outside Counsel. Outside Counsel is Andrews & Kurth L.L.P.

2. Lead Attorney. The Lead Attorney for Outside Counsel is as follows:

Name: Mark Arnold
Phone: 713-220-4200
Email: MarkArnold@andrewskurth.com
Fax: 713-220-4285

3. City Representative. The supervising city representatives for this assignment are:

Name: Joe Morris, City Attorney
Phone: 281-275-2715
Email: jmorris@sugarlandtx.gov
Fax: 281-275-2335

4. Description of Engagement. Legal Services relating to the feasibility, financing, lease, construction, or other matters relating to a proposed Performing Arts Center in the City of Sugar Land.

5. Outside Counsel Compensation. Outside Counsel will be compensated as follows:
(See Exhibit D.)

Outside Counsel may not increase hourly rates as provided in this paragraph during the term of this Contract without the prior written consent of the City.

6. Standard Firm Charges. Attached as an Exhibit B all standard charges that will be billed by Outside Counsel that are not included in Outside Counsel's compensation listed above (i.e. in-house photocopying, vehicle mileage charges). The reasonable cost of services provided by third party vendors that will be passed through to the City at cost and without markup or administrative fees (i.e. long distance telephone calls, on-line legal research) should not be included as standard firm charges. Outside Counsel may not bill the City for standard firm charges not listed in Exhibit B. Outside Counsel may not increase the amount of the standard firm charges during the term of this Contract without the prior written consent of the City.

7. Maximum Contract Amount. The City will not be liable to Outside Counsel for any services, costs, expenses, including the cost of third party vendors, billed through Outside Counsel, under this Contract that collectively exceed \$75,000 if not approved in writing in advance by the City.

8. Additional Contract Documents. The following described document(s) provided by Outside Counsel and attached to this Contract are part of this Contract, except as follows: any provision contained in Outside Counsel's Additional Contract Document(s) that conflicts with a Contract provision not contained in Outside Counsel's Additional Contract Document(s), does not apply to this Contract. The Additional Contract Document(s) provided by Outside Counsel are:

CITY OF SUGAR LAND

Date: _____

ANDREWS KURTH LLP

By _____

Title: _____

Date: _____

Partner

6/27/07

Reviewed for Legal Compliance:

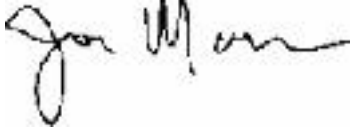
A handwritten signature in black ink, appearing to read "Jon M. [unclear]". The signature is written in a cursive style with a large initial "J" and a distinct "M".

Exhibit A

Billing and Payment Requirements and Procedures

A. General. The City has retained Outside Counsel in part because of Outside Counsel's expertise and overall knowledge of the law in the matters assigned to Outside Counsel. Therefore, the City does not expect to be billed for any basic legal research to educate Outside Counsel or its staff in the general law relating to the matter. Consequently, all legal research Outside Counsel intends to bill to the City shall be specifically requested and authorized in advance by Lead Counsel. The City expects that it will be billed for only one attorney to attend meetings or hearings relating to the Engagement, unless Outside Counsel receives prior approval of the City Representative.

B. Third-Party Vendor Charges. Outside Counsel may have third-party vendors directly bill the City the reasonable costs of services performed for Outside Counsel for the engagement or the Outside Counsel may pay the third-party vendor and seek reimbursement from the City, subject to the limitations of this Contract.

C. Bills Descriptions. All bills submitted to the City must include the following:

1. The date the service was provided.
2. A description of the service provided. The service must be described in sufficient detail to allow the City to perform a meaningful analysis of the service that was provided to the City. The description must include an explanation of why the work was performed if not otherwise apparent from the description. (Example: "Prepared warranty deed; Called Mr. Smith to discuss need for environmental assessment.")
3. The time spent on the service. Individual work items should not be lumped together even if they occur on the same day or segment of time. (Example: "Reviewed title commitment for material encumbrances" and "Called Mr. Smith to discuss environmental assessment" are separate work items.) Any individual item of work for an Engagement that is not performed consecutively with other Engagement work or work performed for the City that takes less than 1/10 of an hour may be not be billed at increments of more than 1/10 of an hour.
4. The person or the position of the person who performed the service.
5. The total amount being billed for the listed service (time x billing rate = amount)
6. The total amount that has been billed to date by Outside Counsel for the engagement.
7. A separate bill for each engagement if Outside Counsel is performing more than one engagement for the City since the City may pay the costs of each engagement from different accounts.

8. A separate listing of all costs charged, including any standard firm costs at the rate set forth in Exhibit B and any third-party vendor costs that were paid by Outside Counsel. A copy of the document showing payment of third-party vendor costs by Outside Counsel must be attached to the monthly billing.

D. Outside Counsel Review. The Lead Attorney will review each bill to be submitted to the City to insure that each item of service was provided, that the service was necessary to the performance of the Engagement, that the time spent on the service was reasonable, and that the service and the billing complies with the terms of this Contract. The Lead Attorney will sign and date the bill indicating that the required review and determination has been performed. The City will not pay Outside Counsel for reviewing a bill or responding to the City's questions regarding a bill.

E. Submission of Billing. Unless directed otherwise by the City Representative, the bill should contain a general description of the engagement, the name of the City Representative, and shall be sent to:

Accounts Payable,
Finance Department
City of Sugar Land
P.O. Box 110
Sugar Land, TX 77487-0110

F. Monthly Billings. Outside Counsel's bills will be submitted to the City monthly and are payable within 30 days of receipt of a bill that is submitted in compliance with the requirements of this Exhibit A. All payments to be made by the City, including the time of payment and the payment of interest on overdue amounts will be paid in accordance with Chapter 2251 of the Government Code.

G. Compliance Required. If Outside Counsel submits a bill that is not in compliance with this Exhibit A, the City will return the bill to Outside Counsel with the deficiencies noted. The City is not liable for nor required to pay a bill received from Outside Counsel unless and until the bill for services performed under this Contract is submitted substantially in compliance with this Exhibit A.

Exhibit B

Standard Firm Charges

Duplicating: We will charge for necessary photocopying, printing or electronic scanning at a rate not exceeding twenty cents per page. Color impressions will be charged at a rate not exceeding one dollar per page. Where it would be less costly to use the services of an outside vendor for bulk copying, electronic scanning, etc. that technique will be used, unless specific concerns about speed, confidentiality, or reliability dictate the use of the Firm's own facilities.

Telephone: We do not charge for local telephone calls. For domestic toll calls, we will charge \$0.07 per minute. International calls will be billed at our cost, without overhead adjustment.

Facsimile: We will not charge for local or in-coming transmissions. We will charge for necessary outgoing telecopies at a rate not exceeding one dollar per page. This amount includes all telephone line charges.

Local Messenger Services: We will charge only for actual charges billed to the Firm for deliveries that are necessary in the interest of dispatch and reliability.

Computer Legal Research: We understand that LEXIS®, WESTLAW®, etc. can be expensive, and should be used efficiently. Computer assisted research is of value to our client if it results in a reduction in the amount of time spent in research or if it is used for researching an issue that cannot otherwise be researched economically. The reasonable and prudent use of LEXIS® or WESTLAW® to assist in research projects will be charged on the basis of our actual cost of conducting the research.

Postage/Express and Overnight Delivery: Standard mail services will be used whenever possible. Written correspondence and documents shall be planned and completed so as to avoid unnecessary use of express mail and delivery services at extra cost. Charges for certified registered, insured, other special handling or express mail will be billed at the actual cost incurred.

Travel Time and Expenses: The client will reimburse domestic air travel charges at the available coach rate unless otherwise approved in advance. Business class, where available, will be charged for foreign travel. Expenses for lodging, restaurants and other transportation will be incurred in a reasonable and prudent manner. If travel time is devoted to working for one or more clients in addition to you, your statement shall reflect only that portion of travel time and expense attributable to your matter. In circumstances where use of a personal automobile is required, we will charge the applicable IRS rate per mile.

Exhibit C

Insurance Requirements

The Contractor shall comply with each and every condition contained herein. The Contractor shall

provide and maintain, until the work covered in the contract is completed and accepted by The City of Sugar Land, the minimum insurance coverages as follows:

1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Contractors obligations contained in the contract.
2. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate.
3. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
4. Errors & Omissions coverage as follows:
 - a. Professional Liability with minimum limits of \$1,000,000.
 - b. This coverage must be maintained for at least two (2) years after the project is completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term the contract.

PLEASE NOTE: The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following-form. The Contractor may maintain reasonable and customary deductibles, subject to approval by the City of Sugar Land.

Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Sugar Land accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards, and contractual liability.

With reference to the foregoing insurance requirement, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Sugar Land shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

3. A waiver of subrogation in favor of the City of Sugar Land shall be contained in the Workers Compensation, and all liability policies.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Sugar Land of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that the City of Sugar Land will receive at least sixty- (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the City of Sugar Land as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by the City of Sugar Land.
9. Insurance must be purchased from insurers that are financially acceptable to the City of Sugar Land.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
2. Shall specifically set forth the notice-of-cancellation or termination provisions to the City of Sugar Land.

Upon request, Contractor shall furnish the City of Sugar Land with certified copies of all insurance policies.

A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Sugar Land within ten (10) business days after contract award by the successful contractor's insurance agent of record or insurance company. The certificate of insurance shall be sent to:

City of Sugar Land
Finance / Purchasing
10405 Corporate Dr.
Sugar Land, TX 77478

Exhibit D
2007 Hourly Rates *

Name	Title	Rate
Mark B. Arnold	Partner	\$475.00
Brett Brasher	Associate	325.00
J. Mark Breeding	Partner	485.00
Todd Brewer	Partner	525.00
Jeff Butler	Associate	320.00
Robert M. Collie, Jr.	Partner	640.00
Robert J. Collins	Of Counsel	485.00
Marcus W. Deitz	Associate	385.00
Tanya A. Fischer	Associate	295.00
Kathryn V. Garner	Partner	525.00
James A. Hernandez	Partner	440.00
Sarah Kittleman	Associate	210.00
Shannon Miller	Paralegal	140.00
Grace O'Malley	Associate	250.00
Cheryl Rosenberg	Of Counsel	440.00
Margo White	Senior Attorney	370.00
Ellen Wilson	Paralegal	165.00
Rick A. Witte	Partner	525.00
Hoang Vu	Associate	385.00

* Rates are adjusted each January 1